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6 || Attorneys for Plaintiff  
**PATRICK PIERCE**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PATRICK PIERCE,  
Plaintiff,  
v.  
WELLS FARGO BANK,  
and DOES 1 through 20,  
Defendant.

CASE NO. C08-01554 JF (HRL)

**PIERCE'S EVIDENTIAL  
OBJECTIONS TO, AND MOTION  
TO STRIKE: (1) DECLARATION  
OF GREG RICHARDSON; AND  
(2) ERRATA OF WELLS FARGO  
BANK**

Date: June 27, 2008  
Time: 9.00 a.m.  
Place: Courtroom 3, 5<sup>th</sup> Floor  
Judge: Hon. Jeremy Fogel

19 PLEASE TAKE NOTICE THAT plaintiff Patrick Pierce (“Pierce”) hereby objects to the  
20 admissibility of the following portions of the declaration of Greg J. Richardson dated June 6, 2008  
21 (the “June Richardson Declaration”), and the following portions of and exhibits to the Errata To  
22 Defendant Wells Fargo Bank, N.A.’s Opposition to Plaintiff’s Motion for Remand:

## Objectionable Content

## Grounds for Objection

24 June Richardson Declaration, Paragraph 2:  
Allegation that Exhibit 1 is a true copy the  
25 Greater Bay Bancorp Change in Control Plan  
("CIC Plan"), and the allegation that Exhibit 1 is  
26 the plan referred to in the complaint.

Lack of personal knowledge, and hearsay  
(Federal Rules of Evidence 602 and 802):

1. There is no foundation laid upon which Mr. Richardson, as outside counsel for defendant, would have personal knowledge of the authenticity of defendant's internal corporate records. Further, the document is not made admissible as a hearsay exception under Rule 803(6), because the referenced document is not

1 Objectionable Content

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a memorandum, report, etc. of acts, events, conditions, etc. that was made at or near the time of the acts, nor does it meet the other requirements of the exception. Indeed, it is counter-intuitive to suggest that an outside law firm might regularly maintain defendant Wells Fargo Bank's business records as part of the law firm's own records.

12 June Richardson Declaration, Paragraph 3:  
13 Allegation that letter from Wells Fargo Bank  
14 was sent to Pierce, and authenticity of exhibit  
15 itself.

Grounds for Objection

2. There is also no possible basis upon which Mr. Richardson could have personal knowledge of what change in control plan Pierce was referring to in his complaint. As Pierce explains in his declaration filed herewith, there were apparently three versions of a change in control plan in existence when he filed his complaint, of which Pierce knew of two. Exhibit 1 was not a plan that Pierce was even aware of at the time the complaint was filed.

16 June Richardson Declaration, Paragraph 4:  
17 Allegation that plan and letter are business  
18 records of Orrick, Herrington & Sutcliffe.

Lack of personal knowledge, and hearsay (Federal Rules of Evidence 602 and 802): There is no possible basis upon which Mr. Richardson, as outside counsel for Wells Fargo Bank could have personal knowledge of the fact that Exhibit 2 is a true copy of a letter from Ms. Johnson to Pierce.

Lack of personal knowledge, and hearsay (Federal Rules of Evidence 602 and 802): There is no foundation laid upon which an independent law firm would be a repository of the records of regularly conducted activity of Wells Fargo Bank. Thus, the documents are not made admissible as a hearsay exception under Rule 803(6), because the referenced documents are not a memorandum, report, etc. of acts, events, conditions, etc. that was made at or near the time of the acts, nor does it meet the other requirements of the exception. Indeed, it is counter-intuitive to suggest that an outside law firm might regularly maintain defendant Wells Fargo Bank's business records as part of the law firm's own records.

25 FURTHER TAKE NOTICE THAT Pierce objects to the Errata on the grounds that an  
26 unsworn document has no evidential value at all, since it is not a recognized method of introducing  
27 evidence in motion proceedings or any other proceedings. Moreover, even if the Errata had been

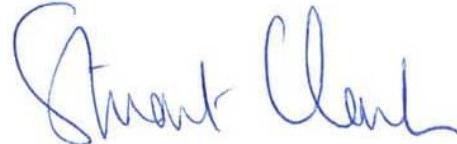
1 verified under penalty of perjury, its content and attachments would be inadmissible on the grounds  
2 stated above with respect to the June Richardson Declaration.

3 Pierce accordingly requests that the objectionable content be ordered stricken from the  
4 record.  
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6 Dated: June 13, 2008

CARR & FERRELL LLP

7  
8 By: \_\_\_\_\_  
9 STUART C. CLARK  
10 CHRISTINE S. WATSON  
11 Attorneys for Plaintiff  
12 PATRICK PIERCE



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